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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/913,799	12/31/2001	Yoshinari Ikegami	KOD65B.001APC	4038
20995	7590	03/03/2004	EXAMINER	
KNOBBE MARTENS OLSON & BEAR LLP			BHAT, NINA NMN	
2040 MAIN STREET			ART UNIT	
FOURTEENTH FLOOR			PAPER NUMBER	
IRVINE, CA 92614			1761	
DATE MAILED: 03/03/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/913,799

Applicant(s)

IKEGAMI ET AL.

Examiner

N. Bhat

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 26 January 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,3,5-16 and 18-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3,5-16 and 18-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### DETAILED ACTION

1. Applicant's arguments have been fully and carefully considered. Applicant's amendment which incorporates the limitations of claims 2 and 4 into claim 1 and the incorporation of claim 17 into claim 14 obviates the rejection under 35 U.S.C. 102(b) rejection over Shibata Teruhiko JP 60-255729, accordingly the rejection is hereby withdrawn. With respect to providing the certified translation of applicant's foreign priority document, the examiner agrees that Remesy no longer qualifies as prior art. However, WO 96/2980, which has been cited and discussed in the Remesy patent, does qualify as prior art and will be used in the rejection of applicant's amended claims necessitated by applicant's amendment. With respect to the 103 rejections applicant has not argued why these references do not reasonably convey to one having ordinary skill in the art why the prior art does not teach a drink which comprises desalted water to which water-soluble mineral components are added and wherein the water soluble mineral components are magnesium and calcium obtained from seawater. Applicant has merely recited that by adding various limitation to claim 1 and 14, i.e. the limitations of claims 2 and 4 to claim 1 and claim 17 to claim 14, renders the rejections moot. The examiner respectfully disagrees as will be delineated below.
2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

4. Claims 1, 3, 5-16, and 18-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shibata Teruhiko JP 60-255729 in combination with Iwata, Sommerville et al. and Kunzler [WO 96/29890].

Shibata Teruhiko JP 60-255729 teach that sea water is desalted using ion-exchange membrane. The desalted seawater is concentrated or dried or diluted and then sterilized. To the desalted water one or more kinds of vitamins, saccharides and proteins are added to obtain a mineral nutrient-enriching agent, which can be used as a nutritional supplement or beverage. [English abstract only]

Iwata teaches a process of obtaining fresh water from seawater by passing the seawater through a plurality of precipitation tanks to which alternating current is supplied which desalts the water. The amount of salt is reduced as the seawater passes through each of the precipitation tanks. The resulting water is highly nutritious which contains increased oxygen. The fresh water is subsequently sterilized to remove and colon bacilli from the water. [abstract, column 5, line 20 et seq.]

Sommerville et al. teaches a method converting brines into useful products by recovering one or more products such as minerals, magnesia, salt from brines, seawater or effluent from a seawater desalination or other inland brines. Iron and magnesium are principle ingredients removed from the seawater or brines. Sommerville teaches a process, which provides purified water as one of the useful products from the process.

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It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a drink, which comprises desalted seawater to which water-soluble mineral components are added from reading the above references. Each of the references teach a method or process of providing desalinated water from seawater which is used in a beverage, Shibata Teruhiko JP 60-255729 specifically teaches that seawater is desalinated then concentrated or diluted or dried and then sterilized and then can be admixed with vitamins, saccharides proteins and other minerals to provide a mineral nutrient enriching agent which can be used as a supplement or beverage drink. The desalted seawater from Shibata Teruhiko JP 60-255729 or Iwata et al. would inherently possess the water soluble minerals because the seawater has minerals such as magnesium, sodium chloride and other trace minerals in the water which may or may not be removed in the desalting process, further in applicant's method claim, applicant desalts, and then adds the salts back into the seawater thus, clearly showing that the minerals are inherently in the water. With respect to adding minerals from salt water into a drinking water composition, Sommerville et al. teaches that useful products can be obtained from seawater, which includes, sea salt, fertilizers, minerals and drinking water. With respect to applicant's claims directed to obtaining the seawater for either the surface or from deep water, this recitation is considered obvious to one having ordinary skill in the art because applicant has not shown or taught in his specification that the depth of the water is critical especially in light of the fact, that applicant uses seawater from depths of a certain distance as well as surface water. It is well within the purview of the ordinary artisan

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familiar with water chemistry to discern that surface water would have a different chemistry than that of deep water, and is not only limited to chemistry, also bacteria and algae would be different based on the depth of the water. [Applicant is suggested to look at Finley USP 4,189,379 as an evidentiary document] Shibata Teruhiko JP 60-255729, Iwata and Sommerville et al. teach using seawater and desalinating the seawater, the seawater used would encompass both surface water as well as deep water. Thus the combined teachings suggests to one having ordinary skill in the art to provide a potable water or drinking water composition which utilizes desalt water which is then enriched with mineral nutrients thus rendering the invention as a whole obvious.

Shibata Teruhiko JP 60-255729 in combination with Iwata teaches applicant's claims substantially as claimed. Specifically, these references teach providing drinking water from desalinating or desalting seawater. Shibata Teruhiko JP 60-255729 specifically teaches desalting the water and then adding additional ingredients such as vitamins, minerals, saccharides, etc. to the water. As stated above, the desalinated seawater or desalted seawater inherently possesses water soluble mineral components in the water composition.

However, none of the references teach that the mineral components added to the water magnesium and calcium and that the weight ratio of the magnesium to calcium (Mg/Ca) is adjusted having a ratio of 4/1 to 1/3.

Kunzler [WO 96/29890] teaches raising the mineral content of water and drinks by adding to ordinary tap water or mineral which has undergone treatment to disinfect and/or remove unwanted components by adding cations such as magnesium and

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calcium in certain proportions to be matched to that of a natural mineral water. [Note abstract and Page 2, lines 25-30 and Page 9, lines 30-35]. Kunzler specifically teaches adding to the treated tap water calcium and magnesium salts. Kunzler does not express the amount of mineral component added to the tap water in terms of a ratio of Mg/C, however Kunzler does teach calcium is added in the range from 2-600 mg and the Magnesium is added in the range of 0.15-100 mg. [Note Page 9, line 30 -35]

It would have been obvious to one having ordinary skill in the art to provide a water from the desalted seawater as described by Shibata Teruhiko JP 60-255729 or Iwata, adding other ingredients to the desalted seawater is specifically taught in Shibata Teruhiko JP 60-255729 but does not specifically recite adding calcium and magnesium which are minerals inherently found in seawater as explained above. Kunzler teaches that it is known in the art to provide water compositions or beverage compositions, which are enriched with minerals, specifically calcium and magnesium in amounts, which would be found in natural mineral water compositions. To use desalted water from seawater, which is then enriched with calcium and magnesium, would have been obvious to one having ordinary skill in the art because the suggestion to modify and enrich desalted seawater has been taught by Shibata Teruhiko JP 60-255729. Kunzler teaches adding salts such as calcium and magnesium to tap water to enrich the tap water or a beverage with calcium and magnesium in amounts found in natural mineral waters. It is maintained that it would have been obvious to one having ordinary skill in the art at the time the invention was made to adjust and provide magnesium and calcium in to a desalted seawater as claimed by applicant from the combined teachings

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of Shibata Teruhiko JP 60-255729, Iwata, Sommerville, and Kunzler as the prior art does fairly suggest in combination applicant's invention as claimed and to optimize the amount of magnesium and calcium as a recognized result effective variable as evidenced by Kunzler to be within the range which would provide best results is within the purview of the ordinary artisan and renders the claims as a whole obvious.[Note the case law of *In re Boesch*, 617 F.2d 272 205 USPQ 215]

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to N. Bhat whose telephone number is 571-272-1397. The examiner can normally be reached on Monday-Friday, 9:30AM-6:00PM.



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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



N. Bhat  
Primary Examiner  
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